

CHARITIES ACT 2006

The Charities Bill received Royal Assent on 8 November 2006 to become the Charities Act 2006 (the Act).

An implementation timetable has now been issued setting out when the various parts of the Act will come into force. The more straightforward items will be implemented during the first half of 2007. More complex areas such as the formation of Charitable Incorporated Organisations and alterations to the licensing regime for street collections will not be implemented until sometime in 2008 or possibly 2009.

The proposed timetable is as follows;

2007 – First Six Months

- The income threshold at which charities are required to register with the Charity Commission is to be increased from £1,000 to £5,000.
- The thresholds at which an independent examination or audit are required will increase as shown in the attached tables.
- Under existing regulations a public benefit is assumed provided that the charity is involved in one of the areas specified as being charitable. Under the new regulations public benefit will not be assumed, but will have to be proven. The Charity Commission is to consult with interested parties and produce guidance on the public benefit test. Further information on the meaning of 'public benefit' is available on the Charity Commission website or from Thomas May & Co.
- Charities will be able to take out trustee indemnity insurance without obtaining the prior approval of the Charity Commission, provided that there is no specific prohibition in the governing document. At present if the governing document does not state that trustee indemnity insurance

can be taken out Charity Commission approval must be obtained.

- Unincorporated charities with income of less than £10,000 per annum will be able to make certain changes to their governing document regarding the objects of the charity and its administration without obtaining the prior approval of the Charity Commission.

2007 – Second Six Months

- The Charity Commission is to set up and maintain a voluntary register of charity mergers. Provided the merger has been registered with the Charity Commission, any legacies and donations left to the original charities will automatically be transferred to the new charity. This reduces the risk of legacies being lost to the charity following a merger because the executors could not trace the original charity.
- Professional fundraisers will now have to advise potential donors of how much they are being paid to carry out the fund raising and not just the fact that they are being paid.
- There is currently no legal requirement for a charity that has one or more subsidiaries to produce group accounts. This will become a legal requirement, subject to a de-minimus limit that has yet to be decided.

2008 - First Six Months

- A Charity Tribunal is to be created. At present if a charity believes that a Charity Commission decision is incorrect, any appeal must be made through the High Court. This is often costly and time consuming. The Charity Tribunal will review Charity Commission decisions and handle appeals against decisions made by

the Charity Commission. The Charity Tribunal is to be established by the Department for Constitutional Affairs.

- New definitions of charity and the public benefit test will be introduced. This will only occur after the Charity Commission has completed its consultation process and issued guidance and the Charity Tribunal referred to above has been established which will provide an accessible right of appeal.
- Trustees can be paid for providing an additional service to the charity. For example if a trustee is a plumber, electrician, decorator etc. he can be paid for such services. Only a minimum number of trustees should receive payment in this manner and such payments should be in the best interests of the charity. It is still prohibited for a trustee to receive any remuneration for acting as a trustee.
- At present a charitable company has to comply with Company law and Charity law. It is intended to create a new corporate structure called a Charitable Incorporated Organisation (CIO). This will provide the benefits of a corporate structure but will only be subject to Charity law and not Company law.

Licensing Regime for Public Collections

There are provisions within the Charities Act to amend the licensing requirements in respect of all public charitable collections. The aim is to enable the Charity Commission to ensure that those carrying out public collections are fit and proper.

Ultimately the Charity Commission will be responsible for issuing public collection certificates that can be valid for up to five years. The new regime will apply to all public collections including face to face fundraising involving requests for direct debits.

The Act has also amended some of the commonly used terms connected with public collections. 'Street' collections has been

changed to 'public places' to include areas such as supermarket forecourts. 'House to house' has been changed to 'door to door' to ensure that business premises are included.

Collections in Public Places

A charity with a public collections certificate from the Charity Commission will need to apply to the local authority for a permit to hold a collection in a specified public place on a specified date. The local authority will be responsible for ensuring that too many collections do not occur in the same place at the same time.

Door to Door Collections

Provided a public collections certificate is held a permit is not required from the local authority to hold the collection but the local authority must be informed that the collection will be taking place.

Local, Short Term Collections

Some small, local collections (for example carol singing) will not require a public collections certificate or local authority permit.

Current indications are that the new licensing regime will not be implemented before 2009.

The above is a brief summary of the Charities Act 2006. Further information is available on the Charity Commission website www.charity-commission.gov.uk or from Thomas May & Co.

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